



The Shoreline Management Act and Use of State-Owned Aquatic Lands

This packet of materials helps to define the nexus between the Shoreline Management Act and the Washington State Department of Natural Resources' (WDNRs) management of state-owned aquatic lands. This was prepared in an effort to assist local planning staff and to facilitate coordination with WDNR while updating shoreline management programs or other planning activities.

The Washington State Constitution provides clear authority to the state for the management of Washington's aquatic lands. Articles XV, XVII, and XXVII establish harbor areas for navigation and commerce, define the extent of state ownership of tidelands, and void territorial grants of tidelands, respectively.

In 1984, the Washington State Legislature passed what is commonly referred to as the Aquatic Lands Act (Chapter 79.105 through 79.135), and delegated to WDNR the responsibility to manage state-owned aquatic lands for the benefit of all present and future Washington State residents (RCW 79.125.800).

The aquatic lands statutes (RCW 79.100 through 79.145) direct WDNR to manage aquatic lands to achieve a balance of public benefits, including public access, navigation and commerce, environmental protection, renewable resource use, and revenue generation when consistent with the other mandates. In addition, it also identifies water-dependent uses (see Attachments A and B) as priority uses for state-owned aquatic lands (RCW 79.105.210).

The WDNR manages approximately 2.4 million acres of state-owned aquatic lands, with its primary role being that of proprietor and trustee rather than regulator. Long-term ecosystem and economic viability are among WDNR's considerations when making decisions regarding use of state-owned aquatic lands. Persons wishing to use state-owned aquatic lands (including owners of adjacent lands), may need to acquire authorization from WDNR, which could include payments for use.

Marinas, piers, and similar land/water connectors are typical authorized uses. Other activities for which authorization is commonly required include aquaculture, non-Tribal commercial shellfish harvest, dredged material disposal, and easements for bridges and for utility crossings, including outfalls (see Attachment A for a more complete listing).

State-Owned Aquatic Lands

State-owned aquatic lands include marine tidelands and the beds of Hood Canal, Puget Sound, Strait of Juan de Fuca, and coastal areas from the extreme low tide seaward three miles, and the navigable lakes and rivers of the state (Figures 1 and 2). The state asserts ownership based on whether a specific body of water is navigable.

Navigable or navigability basically means that a body of water is capable of being used for the transport of useful commerce. The state of Washington considers all bodies of water meandered by government surveyors as navigable unless otherwise declared by a court.

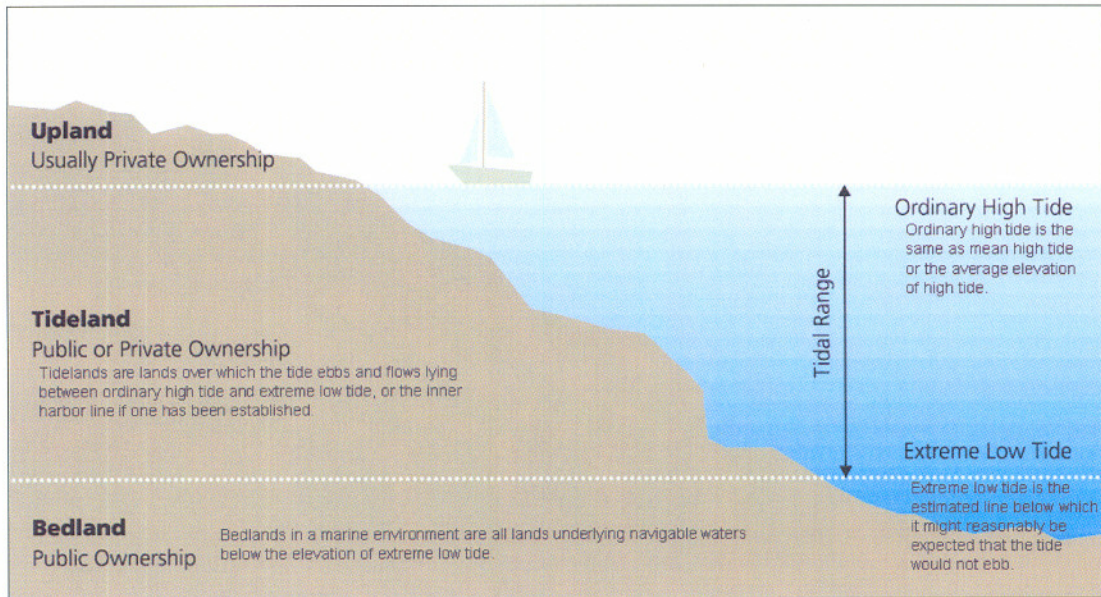


Figure 1. Defining ownership of marine aquatic lands.

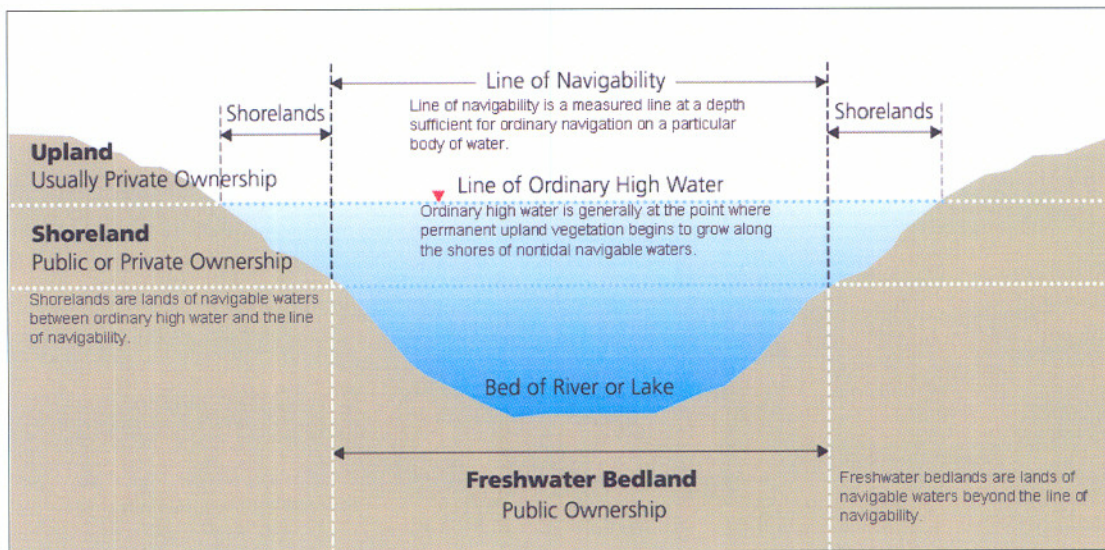


Figure 2. Defining ownership of nontidal aquatic lands.

The Shoreline Management Act

The Washington State Legislature enacted the Shoreline Management Act (SMA) in 1971 to provide a set of rules governing the development and management of shoreline areas of the state. The SMA's general policy addresses three basic areas: appropriate shoreline uses, protection of public rights, and protection of the environment. The SMA also recognizes that there is "a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines" (RCW 90.58.020).

The SMA is a cooperative process: local jurisdictions develop and adopt shoreline master programs (SMPs) consistent with the SMA, while state agencies, public and municipal corporations review their own policies and regulations to achieve consistency with the SMA and the local SMPs.

In developing land use regulations, local governments consider recommendations developed by units of local governments, the Washington State Department of Ecology (Ecology) and other state agencies, including WDNR, as required under RCW 90.58.340.

This planning process incorporates state and local governments needs and priorities and brings consistency to management issues related to shorelines.

WDNR and the SMA:

Planning and Working with Local Government

The WDNR seeks opportunities to work and plan with local governments to facilitate coordination of their local SMPs with WDNR's management goals for state-owned aquatic lands. The WDNR brings a proprietary perspective, offers recommendations on specific issues, and shares information that may be essential for completing shoreline inventories. WDNR has compiled a use classification table (see Attachment A) to familiarize local planners with the different activities and uses on state-owned aquatic lands.

The WDNR's management rules, WAC 332-30-107(3), designate the SMA and master program planning, together with supplemental planning conducted within WDNR, as the primary tools of the agency to identify and provide appropriate uses of "statewide value." Uses of statewide value provide public benefits such as access, use, and protection of state-owned aquatic lands (see Attachment B).

The principal elements to be included in a local SMP (described in RCW 90.58.100(2)), complement the WDNR objective to provide for uses of statewide value. The SMP elements are intended to address the SMA's three primary policy objectives: 1) protection of the public trust, 2) land use on the shoreline, and 3) protection of the shoreline environment and resources. The WDNR's planning guidelines (described in RCW 79.105.030) address similar policy goals, but from an ownership perspective. Table 1 compares the regulatory requirements for SMA implementation and the proprietary planning interests of WDNR.

Table 1. Comparison between shoreline elements to be included in Shoreline Master Programs and WDNR's planning goals for state-owned aquatic lands

Elements to be included in shoreline master programs (RCW 90.58.100(2))	Planning goals for state-owned aquatic lands (RCW 79.105.030)
<ul style="list-style-type: none"> ◆ Economic development ◆ Public and private uses of the shoreline 	<ul style="list-style-type: none"> (a) Encourage direct public use and access; (b) Foster water-dependent uses; (c) Ensure environmental protection; (d) Utilizing renewable resources; and (f) Generate income from use of aquatic lands in a manner consistent with the above goals.
<ul style="list-style-type: none"> ◆ Public access ◆ Recreational opportunities 	<ul style="list-style-type: none"> (c) Encourage direct public use and access.
<ul style="list-style-type: none"> ◆ Circulation and transportation ◆ Conservation and habitat ◆ Statewide interest in preventing flood damages 	<ul style="list-style-type: none"> (b) Ensure environmental protection.
<ul style="list-style-type: none"> ◆ Historic/cultural scientific and educational 	<ul style="list-style-type: none"> (b) Ensure environmental protection; and (c) Encourage direct public use and access.

Recent WDNR Directives that may Apply to SMA Planning:

WDNR has a vested interest in ensuring that local entities are aware of WDNR's management strategies and proprietary responsibility. Because the SMA and local master programs are one of the primary planning tools used by WDNR to guide authorized uses of state-owned aquatic lands, the following section describes several recent WDNR policy decisions that local entities should consider when undertaking their SMP updates.

Residential Use of State-Owned Aquatic Lands

In November 2002, the Board of Natural Resources adopted new rules on residential use of vessels and floating houses located on state-owned aquatic lands. Three facets of the new rules may factor into the planning efforts of local governments. First, the rules allow up to ten percent of the slips within a marina to be used for residential use, unless

local government has specified a higher or lower limit. If local government did not have a limit in place by November 2002, the rules allow local governments to alter the limit by amending their shoreline master plan or by issuing shoreline substantial development conditional use permits. Secondly, the rules require that local governments state in their SMPs if they wish to allow "non-grandfathered" floating houses (e.g., houseboats or house barges) along their shorelines that were not moored with WDNR authorization prior to 1984. Third, the rules create an opportunity for local governments to establish and manage open water anchorage and moorage areas for residential use. These moorage areas would require a WDNR use authorization. If a local government wishes to establish an open water anchorage and moorage area, they must amend their SMP within five years of the effective date of the rules (by November 2007). More information can be found on WDNR's website at

www.dnr.wa.gov or review WAC 332-30-171.

Mooring Buoys On State-Owned Aquatic Lands

Moorage of vessels via mooring buoys on state-owned aquatic lands is a use typically authorized by the WDNR under a license or lease agreement. In 2002, the state legislature amended RCW 79.105.430, which directs the manner in which WDNR manages mooring buoys located on state-owned aquatic lands.

The statute allows residents who own uplands abutting state-owned aquatic lands to use recreational mooring buoys without charge while maintaining:

- The WDNR's ability to restrict specific free use mooring buoys on the basis of protecting navigation, public health and safety, and/or preventing habitat degradation;
- That proposed free use mooring buoy owners must meet all local, state, and federal regulatory requirements;
- That buoy placement may be limited by prior WDNR use authorizations in the proposed area;
- A prohibition of selling or leasing the mooring buoy separately from the upland residence; and
- A prohibition of the use of these buoys for commercial, transient, and residential uses.
- That disputes over the assertion of rights are directed to superior court;
- That free use for mooring buoys are limited to buoys for boats no longer than sixty (60) feet; and

- An allowance of a second buoy for the purposes of securing vessel moorage to the first buoy.

The WDNR has developed a Recreational Mooring Buoys pamphlet, which is available at each WDNR Aquatic District Office. The pamphlet includes important information for residential property owners of uplands adjacent to state-owned aquatic lands that wish to install or maintain a recreational mooring buoy.

Compensatory Mitigation on State Owned Aquatic Lands

In early 2004, WDNR formalized the agency's standard practice for authorizing compensatory mitigation activities on state-owned aquatic lands. Consistent with WAC 332-30-107, local shoreline master planning and WDNR supplemental planning are the agency's preferred means of identifying and mitigating adverse impacts to state-owned aquatic lands. The WDNR may authorize the use of state-owned aquatic lands for compensatory mitigation activities that offset impacts from projects that are either located on state-owned aquatic lands or from projects that are not located on WDNR-managed lands.

The proponent of the mitigation activity must secure a use authorization that protects the site for the length of time determined by the local, state, and/or federal entities requiring the mitigation.

The WDNR supports on-site and in-kind mitigation where possible and ecologically preferable, but will allow off-site and out-of-kind mitigation and the use of mitigation banks if the proponent can illustrate that such alternative compensatory mitigation strategies would be more effective. The WDNR also encourages habitat enhancement and restoration activities for

compensatory mitigation rather than habitat preservation or creation.

The three recent WDNR directives described here represent only a portion of the agency's interests and management activities that may relate to SMP planning. For this reason, local governments are encouraged to consult with WDNR planning

staff when revising SMPs to help ensure a coordinated vision for shoreline management within Washington State.

Contact information for planning staff and districts offices is provided below. Additionally, directions for obtaining ownership and navigability information are included.



WASHINGTON STATE DEPARTMENT OF
Natural Resources

Aquatic Resources Program Contacts

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District Offices



Attachment A

Important Definitions Related to WDNR Management of State-Owned Aquatic Lands

Important Definitions Related to WDNR Management of State-Owned Aquatic Lands
The following definitions are quoted from RCW 79.105.060 and WAC 332-30-106. They are listed as a reference supporting the information included here and may be useful for local entities to consider when planning for areas that may include state-owned aquatic lands.

RCW 79.105.060 Definitions

Nonwater-dependent use	Means a use which can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility.
Water-dependent use	Means a use which cannot logically exist in any location but on the water. Examples include, but are not limited to, waterborne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water-dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks.
Water-oriented use	Means a use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and house boats. For the purposes of determining rent under this chapter, water-oriented uses shall be classified as water-dependent uses if the activity either is conducted on state-owned aquatic lands leased on October 1, 1984, or was actually conducted on the state-owned aquatic lands for at least three years before October 1, 1984. If, after October 1, 1984, the activity is changed to a use other than a water-dependent use, the activity shall be classified as a nonwater-dependent use. If continuation of the existing use requires leasing additional state-owned aquatic lands and is permitted under the shoreline management act of 1971, chapter 90.58 RCW, the department may allow reasonable expansion of the water-oriented use.

WAC 332-30-106 Definitions

Aquaculture	Means the culture and/or farming of food fish, shellfish, and other aquatic plants and animals in fresh water, brackish water or salt water areas. Aquaculture practices may include but are not limited to hatching, seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals.
Aquatic lands	Means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters (RCW 79.105.060). Aquatic lands are part of the public lands of the state of Washington. Included in aquatic lands are public places subsection (51) of this section, waterways subsection (74) of this section, bar islands, avulsively abandoned beds and channels of navigable bodies of water, managed by the department of natural resources directly, or indirectly through management agreements with other governmental entities.
Beds of navigable waters	Means those submerged lands lying waterward of the line of extreme low tide in navigable tidal waters and waterward of the line of navigability in navigable lakes, rivers and streams. The term, "bedlands" means beds of navigable waters.
Extreme low tide	Means the line as estimated by the federal government below which it might reasonably be expected that the tide would not ebb. In the Puget Sound area, this point is estimated by the federal government to be at elevation 4.50 feet below the datum plane of mean lower low water, (0.0). Along the Pacific Ocean and in the bays fronting thereon and the Strait of Juan due Fuca, the elevation ranges down to minus 3.5 feet in several locations.

Floating house	Means any floating structure that is designed, or has been substantially and structurally remodeled or redesigned, to serve primarily as a residence. "Floating houses" include house boats, house barges, or any floating structures that serve primarily as a residence and do not qualify as a vessel (see definition). A floating structure that is used as a residence and is capable of navigation, but is not designed primarily for navigation, nor normally is capable of self propulsion and use as a means of transportation is a floating house, not a vessel.
Harbor area	Means the area of navigable waters determined as provided in § 1 of Article XV of the state Constitution which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce (RCW 79.105.060). Harbor areas exist between the inner and outer harbor lines as established by the state harbor line commission.
Line of navigability	Means a measured line at that depth sufficient for ordinary navigation as determined by the board of natural resources for the body of water in question.
Meander line	Means fixed determinable lines run by the federal government along the banks of all navigable bodies of water and other important rivers and lakes for the purpose of defining the sinuosities of the shore or bank and as a means of ascertaining the areas of fractional subdivisions of the public lands bordering thereon.
Moorage facility	Means a marina, open water moorage and anchorage area, pier, dock, mooring buoy, or any other similar fixed moorage site.
Multiple use management	Means a management philosophy that seeks to ensure that several uses or activities can occur at the same place at the same time. The mechanism involves identification of the primary use of the land with provisions such as performance standards to permit compatible secondary uses to occur.
Navigability or navigable	Means that a body of water is capable or susceptible of having been or being used for the transport of useful commerce. The state of Washington considers all bodies of water meandered by government surveyors as navigable unless otherwise declared by a court.
Open water moorage and anchorage areas	Are areas of state-owned aquatic lands leased for moorage and anchorage that do not abut uplands and do not include a built connection to the uplands. They are generally in the center of a waterbody, to provide moorage in addition to any marinas and docks along the edge of the waterbody. They may contain mooring buoys, floating moorage docks, other moorage facilities not connected to the shoreline, and/or anchorage areas, as determined by the lessee and approved by the department. These areas are leased in accordance with WAC 332-30-139(5) and subject to the restrictions therein.
Ordinary high tide	Means the same as mean high tide or the average height of high tide. In Puget Sound, the mean high tide line varies from 10 to 13 feet above the datum plane of mean lower low water (0.0).
Ordinary high water	Means, for the purpose of asserting state ownership, the line of permanent upland vegetation along the shores of nontidal navigable waters. In the absence of vegetation, it is the line of mean high water.
Public benefit	Means that all of the citizens of the state may derive a direct benefit from departmental actions in the form of environmental protection; energy and mineral production; utilization of renewable resources; promotion of navigation and commerce by fostering water-dependent uses; and encouraging direct public use and access; and generating revenue in a manner consistent with RCW 79.105.030.
Public tidelands	Means lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law, and include state lands, tidelands, shorelands and harbor areas as herein defined, and the beds of navigable waters belonging to the state.

Public place	Means a part of the aquatic lands set aside for public access through platted tidelands, shorelands, and/or harbor areas to the beds of navigable waters.
Public use	Means to be made available daily to the general public on a first-come, first-served basis, and may not be leased to private parties on any more than a day use basis.
Public use beach	Means a state-owned beach available for free to the public use but may be leased for other compatible uses.
Residential use	Means any noncommercial habitation of: (a) A floating house, as defined in WAC 332-30-106(23) ; or (b) A vessel, as defined in WAC 332-30-106(74) , when any one of the following applies: (i) Any person or succession of different persons resides on the vessel in a specific location, and/or in the same area on more than a total of thirty days in any forty-day period or on more than a total of ninety days in any three hundred sixty-five-day period. "In the same area" means within a radius of one mile of any location where the same vessel previously moored or anchored on state-owned aquatic lands. A vessel that is occupied and is moored or anchored in the same area, but not for the number of days described in this subsection, is considered used as a recreational or transient vessel; (ii) The city or county jurisdiction, through local ordinance or policy, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility where it is moored; (iii) The operator of the facility where the vessel is moored, through the moorage agreement, billing statement, or facility rules, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility; or (iv) The occupant or occupants identify the vessel or the facility where it is moored as their residence for voting, mail, tax, or similar purposes.
Shore	Means that space of land that is alternately covered and left dry by the rising and falling of the water level of a lake, river, or tidal area.
State-owned aquatic lands	Means those aquatic lands and waterways administered by the department of natural resources or managed under department agreement by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of state agencies other than the department of natural resources (RCW 79.105.060).
Statewide value	The term applies to aquatic land uses and natural resources whose use, management, or intrinsic nature have statewide implications. Such uses and resources may be either localized or distributed statewide. Aquatic land uses of statewide value provide major statewide public benefits. Public use and access, renewable resource use and water-dependent use have been cited by the legislature as examples of such uses. Aquatic land natural resources of statewide value are those critical or uniquely suited to aquatic land uses of statewide value or to environmental quality. For example, wild and scenic rivers, high quality public use beaches and aquatic lands fronting state parks are of statewide value for public use and access. Commercial clam and geoduck beds and sites uniquely suited to aquaculture are of statewide value to renewable resource use. Harbor areas are of statewide value to water-dependent navigation and commerce. Certain aquatic land habitats and plant and animal populations are of statewide value to recreational and commercial fisheries, wildlife protection, and scientific study.
Vessel	Means a floating structure that is designed primarily for navigation, is normally capable of self propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency.